

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

RANDY BERLINER,

Plaintiff,

v.

MILWAUKEE ELECTRIC TOOL  
CORPORATION,

Defendant.

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No. 4:14CV01847 ERW

**MEMORANDUM AND ORDER**

This matter comes before the Court on Plaintiff Randy Berliner’s “Motion to Remand” [ECF No. 11], Plaintiff’s “Motion for Reconsideration” [ECF No. 6], and Defendant Milwaukee Electric Tool Corporation’s “Motion to Compel” [ECF No. 5].

**I. BACKGROUND**

In April 2014, Randy Berliner (“Plaintiff”) filed suit against Milwaukee Electric Tool Corporation (“Milwaukee Electric”) and Ameren Corporation (“Ameren”) in the Circuit Court of Franklin County [see ECF No. 3]. Plaintiff’s Petition contained the following claims: strict liability against Milwaukee Electric (Count I); products liability-negligence against Milwaukee Electric (Count II); failure to warn against Milwaukee Electric (Count III); breach of implied warranty of merchantability against Milwaukee Electric (Count IV); breach of express warranty against Milwaukee Electric (Count V); and negligence against Ameren (Count VI).

On October 16, 2014, Milwaukee Electric filed its pending Motion to Compel [ECF No. 5]. That same day, the state court granted Ameren’s Motion to Dismiss [see ECF Nos. 6 at ¶ 3; 10 at 2]. Subsequently, on October 31, Plaintiff filed its pending Motion for Reconsideration of

the state court's order granting Ameren's Motion to Dismiss [ECF No. 6]. Soon after, on November 3, Milwaukee Electric filed a Notice of Removal with this Court, pursuant to 28 U.S.C. §§ 1332, 1441, and 1446 [ECF No. 1]. On November 10, Plaintiff filed its pending Motion to Remand [ECF No. 11], and three days later, Milwaukee Electric made a filing indicating it consented to Plaintiff's Motion to Remand [ECF No. 12].

## **II. RULINGS**

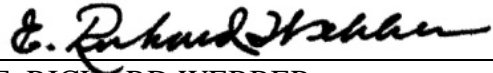
Because Milwaukee Electric has consented to Plaintiff's Motion to Remand, the Court will grant the Motion. The case is hereby remanded back to state court.

Because the Court is granting Plaintiff's Motion to Remand, there is no need to address either of the other two pending motions (Milwaukee Electric's Motion to Compel and Plaintiff's Motion for Reconsideration). In leaving these motions for the state court to hear and adjudicate upon remand, the Court notes both motions were originally filed in state court and simply remained pending upon removal. Further, because Plaintiff's Motion for Reconsideration seeks reconsideration of the state court's prior ruling, it seems particularly fitting for this Court to avoid ruling on the Motion and allow the state court to take it up on remand. Even if this Court did consider the Motion for Reconsideration, granting the Motion would effectively re-join Ameren to the litigation and simultaneously destroy complete diversity, leaving this Court without subject matter jurisdiction.

Accordingly,

**IT IS HEREBY ORDERED** that Plaintiff's "Motion to Remand" [ECF No. 11] is  
**GRANTED.**

Dated this 19th Day of November, 2014.

A handwritten signature in black ink, appearing to read "E. Richard Webber", written over a horizontal line.

E. RICHARD WEBBER  
SENIOR UNITED STATES DISTRICT JUDGE